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CITATIONS

525406—43——1

In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 889

RICHARD PHILIP ADAMS, JOHN WALTER BORDENAVE, AND LAWRENCE MITCHELL

v.

THE UNITED STATES OF AMERICA AND JOHN S. RYAN, WARDEN

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The District Court of the United States for the Western District of Louisiana rendered no opinion. The United States Circuit Court of Appeals for the Fifth Circuit has not rendered judgment.

JURISDICTION

The certificate of the circuit court of appeals dated March 29, 1943, was filed in this Court on

April 6, 1943. The jurisdiction of this Court is conferred by Section 239 of the Judicial Code as amended by the Act of February 13, 1925. See also Rule 37 of this Court.

QUESTIONS PRESENTED

The questions certified are the following:

1. Is the effect of the Act of October 9, 1940, quoted *infra* p. 11 [c. 793, 54 Stat. 1083; R. S. 355, as amended (40 U. S. C. 255)] to provide that, as to lands within a State thereafter acquired by the United States, no jurisdiction exists in the United States to enforce the criminal laws embraced in United States Code, Title 18, Chapter 11, and especially Section 457 relating to rape, by virtue of Section 451, Third, as amended June 11, 1940, unless and until a consent to accept jurisdiction over such lands is filed in behalf of the United States as provided in said Act?

2. Had the District Court of the Western District of Louisiana jurisdiction, on the facts above set out, to try and sentence the appellants for the offense of rape committed within the bounds of Camp Claiborne on May 10, 1942?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional and statutory provisions involved are set forth in Appendix A, *infra*, pp. 28–31.

STATEMENT

The following statement of facts is contained in the certificate:

"Case No. 10410[1] is an appeal from a conviction and a death sentence had in the District Court of the United States for the Western District of Louisiana on August 10, 1942, for the offense of rape, under Section 272 Third, and Section 278 of the United States Criminal Code, as amended, 18 U. S. C. A. § 451, 457. A question not raised on the trial, but raised on appeal, is whether the place of the commission of the offense was at the time within the jurisdiction of the United States so as to make applicable the cited criminal law. In aid of the appeal, and invoking as a precedent *Adams v. United States* [*ex. rel. McCann,* 317 U. S. 269], decided by the Supreme Court Dec. 21, 1942, the appellants applied to this Court for a writ of habeas corpus against the warden having them in custody, alleging the custody to be based on a void commitment for the single reason that the United States had no jurisdiction to punish the crime of rape at the place and time it was alleged to have been committed. This is case No. 10568.[2] The order to show cause why

[1] Entitled in the Circuit Court of Appeals "Richard Philip Adams, John Walter Bordenave, and Lawrence Mitchell, Appellants, versus United States of America, Appellee."

[2] Entitled in the Circuit Court of Appeals "Richard Philip Adams, John Walter Bordenave, and Lawrence Mitchell, Applicants, versus John S. Ryan, Warden, Respondent."

the writ should not be issued was answered by the United States. The question presented by the main appeal, as to jurisdiction, is the same as that presented by the application for the writ of habeas corpus. The two matters were argued together and are before us for decision.

"The proven facts are that the lands occupied by Camp Claiborne, in Rapides Parish in the Western District of Louisiana, were in the summer of 1940 under contract to be sold by Branch E. Smith to the United States, and were to be used for a national forest under the supervision of the Secretary of Agriculture. The Secretary of Agriculture by letter to the Secretary of War agreed to their use for military purposes. Title in fee simple was conveyed to the United States by Smith Dec. 19, 1940, and the act of sale was duly recorded the same day. On February 18, 1941, another act correcting the former one was made and recorded. Camp Claiborne, a military reservation, embracing several thousand acres, was thereafter established on the land, temporary buildings and tents were erected, and soldiers were stationed and being trained there, but no fort or arsenal or dockyard is shown to exist there. The three appellants, who were then and there soldiers in service at the camp, are charged with, and by the jury have been found guilty of, on the tenth day of May, 1942, within the limits of the camp, raping a civilian woman. At that time, and at the time of their trial, neither the

Secretary of Agriculture nor the Secretary of War nor any other authorized person had in behalf of the United States filed with the Governor of Louisiana, or in any other manner prescribed by the law of Louisiana, a notice of acceptance of jurisdiction over the lands above mentioned, as provided in United States Code Title 40, Section 255, as amended by the Act of Oct. 9, 1940, 54 Stats. 1083."

SUMMARY OF DISCUSSION

A. R. S. 355, as amended February 1, 1940 (40 U. S. C., Section 255), provides that the United States shall obtain "exclusive or partial" jurisdiction over lands only by filing an acceptance of such jurisdiction with the appropriate state authority. The legislative history of the Act shows that the term "partial" was designed to reach all jurisdiction less than exclusive; it would thus apply to the present situation, even if we assume that the state had offered the United States "concurrent jurisdiction." This has been the administrative construction of the Act. Since no acceptance was filed, the United States did not have jurisdiction over the land upon which the crime was committed.

B. The land involved in this case was acquired for forestry purposes. Section 12 of the Weeks Forestry Act of 1911 (16 U. S. C., Section 480) provides that civil and criminal jurisdiction "over persons within national forests shall not be af-

fected or changed by reason of their existence." The jurisdiction over such persons would be both affected and changed if they were subjected both to state laws and to the federal laws applicable to federal lands instead of to the former alone. The Department of Agriculture, which supervises the national forests, has so construed the Act. Accordingly, it would appear that Congress has refused to authorize the acceptance of concurrent jurisdiction over forest lands.

DISCUSSION

THE UNITED STATES HAD NOT ACCEPTED JURISDICTION OVER THE LANDS UPON WHICH THE CRIME WAS COMMITTED AND THEREFORE THE DISTRICT COURT WAS WITHOUT JURISDICTION TO TRY AND SENTENCE THE DEFENDANTS

Under Sections 272 and 278 of the Criminal Code (18 U. S. C. Sections 451 and 457) rape is a federal offense, punishable by death, when committed on lands in a state owned by the United States and over which it has "exclusive or concurrent jurisdiction."[3]

[3] Section 272 also applies to crimes committed at "any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building." This clause is inapplicable, since the lands in the present case were purchased through the Secretary of Agriculture for national forest purposes. Furthermore, the "consent" required to bring this provision of the statute into operation has been held to be consent to exclusive federal jurisdiction (*Fort Leavenworth R. R. Co.* v. *Lowe*, 114, U. S. 525); here consent was qualified by

It has never been contended that the United States had *exclusive* jurisdiction over the lands here involved at the time the offense was committed. As stated in the certificate, the lands were acquired in 1940 by the United States for use as a national forest.[4] The statute of Louisiana consenting to the purchase of lands by the United States for national forests provides for the retention by the state of "concurrent jurisdiction" over crime,[5] and the Weeks Forestry Act[6] pro-

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the reservation of criminal jurisdiction in the state (see notes 5, 8, *infra*).

[4] We are advised by the Department of Agriculture that the lands are a part of the Kisatchie National Forest which was established by presidential proclamation on August 30, 1933, amended on June 13, 1936, to embrace the lands now included in Fort Claiborne.

[5] Louisiana Act No. 90 of 1922, as amended by Act No. 71 of 1924 (Dart's Statutes of Louisiana, 3329), consenting to the purchase by the United States of lands for national forests in that state provided "that the state shall retain a concurrent jurisdiction" so that "such criminal process as may issue under the authority of the state against the person charged with a commission of any crime without *or within* the said jurisdiction may be executed thereon in like manner as before the passage of this Act." [Italics added.]

[6] Section 12 of the Weeks Forestry Act of March 1, 1911, 36 Stat. 963, 16 U. S. C. 480, provides: "The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State." The Department

vides that the state shall not "lose its jurisdiction" over criminal and civil matters in the national forests. The result would be the same if the lands had been acquired for the military purpose for which they are now being used. The general consent statute of Louisiana in force at the time, which was applicable to land purchased for other than forest purposes, excepted from its cession of exclusive jurisdiction "the administration of the criminal laws of said State" (Louisiana Act, No. 12, sec. 2 (1892), Dart's Statutes of Louisiana, § 2898). And even if there had been an unqualified consent or cession, the Act of February 1, 1940, 54 Stat. 19, amending R. S. 355 (40 U. S. C. 255), expressly provides that before exclusive jurisdiction shall vest in the United States, an acceptance thereof must be filed with the Governor, and, as the certificate states, no such certificate was filed prior to the commission of the offenses in the present case.[7]

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of Agriculture has uniformly taken the position that in view of the requirements of this statute the United States does not have exclusive jurisdiction over national forests. See Opinion No. 4311 of Solicitor, Department of Agriculture, dated July 18, 1942, discussed *infra*, p. 25.

[7] In 1942, the Louisiana Legislature, by Act No. 31 (Dart's Statutes of Louisiana 2898 (Supp.)), amended the 1892 consent statute so as to cede exclusive jurisdiction, without any vitiating reservation, over any and all lands acquired by the United States. On January 2, 1943, Secretary of War Stimson sent to the Governor of Louisiana an acceptance of exclusive jurisdiction ov r the lands comprising Camp Claiborne, effective January 15, 1943. Receipt of the Secretary's notification of acceptance was acknowledged by Governor Jones on January 7, 1943. A copy of the Secretary's letter is set forth in Appendix B, *infra*, p. 32.

The question is, therefore, whether the United States had acquired concurrent jurisdiction with Louisiana in the administration of the criminal law over the land at the time in question. Plainly, Louisiana had proffered such jurisdiction by the act of 1922, *supra,* note 5, consenting to the purchase of lands for national forests, although this is not at all clear if the lands are not to be treated as forests and are governed by the general consent Act of 1892.[8] But this Court has declared that

[8] Section 2 of Louisiana Act No. 12 of 1892 (Dart's Statutes of Louisiana, § 2898) consented to the acquisition of lands within the state by the United States and ceded exclusive jurisdiction for all purposes "except the administration of criminal laws of said State." The exception clause may well be construed not only as reserving to Louisiana the right to enforce its criminal laws on ceded lands but as not vesting the United States with general criminal jurisdiction at all. Indeed, in 1892, the predecessor to Criminal Code Section 272 (R. S. 5339) applied only to lands subject to exclusive federal jurisdiction, so that the reservation of state jurisdiction over crimes would, in itself, have precluded the United States from exercising any criminal jurisdiction. Thus, at that time, the Louisiana Legislature might have understood that it was retaining exclusive jurisdiction over criminal matters. Attorney General Knox, however, was of a contrary view; he ruled, with respect to the 1892 Louisiana Act, that the United States obtained exclusive jurisdiction, on the ground that if a state grants consent to federal jurisdiction, qualifications upon that consent are void. 24 Op. A. G. 617 (1903). This opinion seems inconsistent with earlier and later opinions with respect to substantially identical statutory provisions (8 Op. A. G. 418 (1857); 20 *id.* 611 (1893); 31 *id.* 260, 265, 282, 294 (1918)), and Attorney General Gregory expressly refused to follow it (31 *id.* 260). Cf. *James* v. *Dravo Contracting Co.*, 302 U. S. 134.

when a state grants exclusive jurisdiction to the federal government, "the grant may be accepted or declined,"* and we assume that the same rule obtains when a state grants concurrent jurisdiction.

We think that there was no acceptance of concurrent jurisdiction as to the lands involved in this case both (1) because no notification of acceptance of such jurisdiction had been filed in the manner required by R. S. 355, as amended February 1, 1940, and (2) because the Weeks Forestry Act of March 1, 1911, 36 Stat. 963, 16 U. S. C. Sec. 480, provides that the jurisdiction of the states "both civil and criminal * * * shall

* *Mason Co.* v. *Tax Comm'n*, 302 U. S. 186, 207; *Atkinson* v. *Tax Comm'n*, 303 U. S. 20, 23; *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, 528. Inasmuch as the rule that there must be an acceptance of exclusive jurisdiction rests upon "familiar principles applicable to grants" (*Mason Co.* v. *Tax Comm'n*, 302 U. S. 186, 207), the same rule is equally applicable to a transfer of less than exclusive jurisdiction, for there is no exception to those familiar principles which dispenses with the necessity of acceptance where the grant is for less than full fee title. Inasmuch as acceptance of exclusive jurisdiction is required because "a transfer of legislative jurisdiction carries with it not only benefits but obligations" (*James* v. *Dravo Contracting Co.*, 302 U. S. 134, 148), the same considerations of policy are applicable whether the transfer is of exclusive or concurrent jurisdiction. Moreover, to hold that there must be an acceptance in the one case and not in the other would indeed generate "uncertainty and confusion" and multiply the "manifold legal phases of the diverse situations arising out of the existence of federally-owned lands within a state" referred to in the dissenting opinion in *Pacific Coast Dairy* v. *Department of Agriculture*, No. 275, this Term, decided March 1, 1943.

not be affected or changed" by the acquisition of lands for forest purposes.

A. The United States has not accepted partial or concurrent legislative jurisdiction in the manner required by Section 355 of the Revised Statutes, as amended

R. S. 355, as amended February 1, 1940 [10] (54 Stat. 19, 40 U. S. C. Sec. 255) provides:

> Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, *exclusive or partial,* not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. *Unless and until the United States has accepted*

[10] R. S. 355 was again amended on October 9, 1940, so as to add new paragraphs, but the paragraph pertinent here was retained without change (54 Stat. 1083.)

> *jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.* [Italics added.]

This Act prescribes the means whereby the United States shall accept "exclusive or partial" jurisdiction over all lands acquired for the United States, whether for forestry or for other purposes. It establishes a conclusive presumption that jurisdiction has not been accepted unless a notice of acceptance has been filed with the Governor of the State or in a manner prescribed by state law. It is not disputed that no such notice was filed as to the lands involved in this case. If R. S. 355 applies to such lands it would seem clear that the United States never acquired jurisdiction over them.

The contention advanced by the United States Attorney in the court below was that the Louisiana Act of 1892 and the Act of 1922, *supra*, p. 7, n. 5, vested in the United States "concurrent jurisdiction" over forest lands, and that R. S. 355 applies only where the state is ceding "exclusive or partial" jurisdiction but not when the session is of "concurrent" jurisdiction. "Concurrent" jurisdiction is obviously not covered by the reference to "exclusive" jurisdiction in the federal act. And it was argued, on the basis of definitions in legal and other dictionaries, that the word "partial" could not be deemed to include "concurrent." It was said that when the Federal Government has

"partial" jurisdiction, its jurisdiction covers only parts of the whole and is incomplete; when jurisdiction is "concurrent," on the other hand, the federal government has complete jurisdiction which is not diminished by the fact that the states also have jurisdiction over the same lands.

It is, of course, possible to construe the words "partial" and "concurrent" in the manner indicated. But in this statute "partial" is used in contrast to "exclusive," and in this setting we think that "partial" was intended to mean any jurisdiction less than exclusive. This interpretation, which would make "partial" sufficiently broad to include cases of concurrent jurisdiction, we believe is required by the legislative history of the Act and the objects it was designed to achieve.

Prior to its amendment in February 1940, Section 355 of the Revised Statutes provided that "No public money shall be expended upon any site or land purchased by the United States for the purposes of erecting thereon" any "building of any kind whatever * * * until the consent of the legislature of the State in which the land or site may be, to such purchase, has been given" (Joint Resolution of September 11, 1841 (5 Stat. 468), as amended by Act of June 28, 1930 (46 Stat. 828)). This statute had been uniformly construed as requiring an unqualified consent by the state legislature to the exercise of exclusive

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jurisdiction by the United States [11] upon the theory that the "consent" required by the statute is that "contemplated and spoken of in Article I, sec. 8, cl. 17, of the Constitution (24 Op. A. G. 617, 619 (1903)): that it must be free from qualifications, conditions, or reservations inconsistent with the exercise by the Congress of 'exclusive legislation' over the area acquired." 31 Op. A. G. 261, 262 (1918). As sometimes stated, the transfer of jurisdiction contemplated by the statute was that exclusive jurisdiction "which according to the letter and intent of the Constitution (Article I, sec. 8, cl. 17) are in such cases to be vested in the United States." 8 Op. A. G. 102 (1856); 10 Op. A. G. 34 (1861); 15 Op. A. G. 212 (1877); 24 Op. A. G. 617 (1903); 31 Op. A. G. 260, 263, 265, 282, 294 (1918); 38 Op. A. G. 341 (1935). Cf. *Fort Leavenworth R. Company* v. *Lowe*, 114 U. S. 525, 532–534.

Following the decision of this Court in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, which set at rest all constitutional doubts as to the power of the states to give a conditional or qualified consent, the Attorney General was asked to reconsider these previous interpretations of section 355. The Attorney General, however, adhered to the previous view, holding that "The probable truth is that the Congress, when choosing its language in

[11] See 10 Op. A. G. 34, 39 (1861); 24 Op. A. G. 617, 619 (1903); 31 Op. A. G. 260, 261 (1918); 31 Op. A. G. 282, 283 (1918); 31 Op. A. G. 294, 295 (1918); 38 Op. A. G. 341, 345 (1935).

1841, thought that consent would carry with it exclusive jurisdiction and that the interpretation thereafter placed upon the statute correctly reflected the legislative contemplation." 39 Op. A. G. 285, 288 (1939).

This interpretation of the statute, coupled with the decision of this Court in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, 143, to the effect that "other needful Buildings" as used in Article I, sec. 8, cl. 17, embraced "whatever structures are found to be necessary in the performance of the functions of the Federal Government" greatly expanded the concept of "building," as used in old R. S. 355, to include dams, bridges, roads, and other structures. Accordingly, it became necessary to secure exclusive jurisdiction in virtually every case of the acquisition of land, as structures of some sort are required in connection with nearly every project for which land is acquired by the United States. This presented serious administrative difficulties, and it immediately became apparent that the United States would be required to acquire exclusive jurisdiction over areas where this was not desirable.

The Department of Justice thereupon undertook a reexamination of the entire problem. A memorandum was sent to the heads of each of the departments and agencies of the Government which acquire lands in the administration of their affairs, requesting their collaboration. Each of these departments and agencies thereupon made

an elaborate survey of the land under its immediate control and of the necessity and desirability of the United States exercising legislative jurisdiction over them. From these surveys it became apparent that "The needs of the various departments differ." Hearings, House Committee on Public Buildings and Grounds, H. R. 7293, 76th Cong., 1st sess., p. 5. In some instances the acquiring agencies were of the view that exclusive jurisdiction was both necessary and desirable to their effective administration. Others believed that concurrent or partial jurisdiction would be preferable for their particular purposes, while still others were emphatic in disclaiming need for any jurisdiction whatever.[12]

Similarly, the decisions of this Court holding that "Acceptance may be presumed in the absence of evidence of a contrary intent" (*Mason Co.* v. *Tax Comm'n,* 302 U. S. 186, 207; *Atkinson* v. *Tax Comm'n,* 303 U. S. 20, 23) presented the difficult problem of proving acceptance or rejection in civil and criminal litigation, i. e., what acts of administrative officials in a given case would be sufficient and the precise time such acceptance or rejection could be said to have occurred.

Hence, it was agreed by all of the interested agencies that Section 355 of the Revised Statutes should be revised to meet the present day require-

[12] This appears from the files accumulated in the Department during the course of its study of the problem.

ments of the National Government. Annual Report of the Attorney General, 1940, p. 126. This Court, by its decision in *James* v. *Dravo Contracting Co.*, 302 U. S. 134, and the cases following it, had shown that no constitutional barriers stood in the way of any such legislation, and had pointed out that the problem was one of "practical adjustment." *Mason Co.* v. *Tax Comm'n*, 302 U. S. 186, 208; *Collins* v. *Yosemite Park Co.*, 304 U. S. 518, 528. In view of the varying needs of the various acquiring agencies, there was complete unanimity that any corrective legislation should leave to the head of the department or agency in each instance to determine the most suitable type of jurisdiction needed for the particular project, and that all confusion should be eliminated by requiring an unequivocal act of acceptance, such as the filing of a notification with the Governor of the state, which had already been required by some state statutes,[13] or by compliance with any equivalent procedure which the states might provide, such as the recordation of maps or plats.[14]

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[13] See, e. g., *Yellowstone Park Transportation Co.* v. *Gallatin County*, 27 F. (2d) 410, 411 (D. Mont.), reversed on other grounds, 31 F. (2d) 644 (C. C. A. 9), certiorari denied, 280 U. S. 555; *State* v. *Oliver*, 162 Tenn. 100 (1931); cf. *Brown* v. *United States*, 257 Fed. 46, 50–51 (C. C. A. 5), reversed on other grounds, 256 U. S. 335.

[14] See, e. g., *Pothier* v. *Rodman*, 291 Fed. 311, 320 (C. C. A. 1), reversed on other grounds, 264 U. S. 399; *Gill* v. *State*, 141 Tenn. 379 (1919); *State* v. *Bruce*, 104 Mont. 500 (1937), affirmed by equally divided court, 305 U. S. 577.

Accordingly, a bill which subsequently was adopted as the Act of February 1, 1940 (c. 18, 54 Stat. 19) was prepared in the Department of Justice. As the legislative history shows, its enactment was precipitated by the fact that public building programs were being held up in several of the states which did not have general consent statutes or in which qualifications had been attached which failed to meet the requirements of existing law (see Hearings, House Committee on Public Buildings and Grounds, H. R. 7293, 76th Cong., 1st sess., pp. 2–5). The purpose of the amendment was explained to the Committee by the Department attorneys who drafted it, as follows *id.* p. 5:

> This bill would substitute for that provision of section 355 of the Revised Statutes requiring the consent of the State, a provision making it *flexible,* in that the head of the acquiring agency or department of the Government could at any time designate *what type of jurisdiction is necessary; that is, either exclusive or partial.* In other words it definitely contemplates leaving the question of extent of jurisdiction necessary to the head of the land-acquiring agency. [Italics added.]

The committee was further advised that "The essential change that this bill would make in the statute is to allow the acquiring agency, or the government agency in charge of the particular land or project to get from the State the *jurisdic-*

tion needed to carry out the project" [italics added], "to get what they want, or to try to get it, instead of being tied down by a strict requirement that they must have exclusive jurisdiction" (*id.*, pp. 5–7). It was pointed out that "this bill provides for a definite method of acceptance" and that "In this way, everybody will know whether there is or is not an acceptance of the jurisdiction" (*id.*, p. 7). Finally, the committee was told (*id.*):

> There is one other thing I would like to call attention to, and that is that under this proposed statute an agency can obtain partial jurisdiction. *They may obtain no jurisdiction at all, or partial jurisdiction, or exclusive jurisdiction.* [Italics supplied.]

The bill was passed on the basis of this explanation without further significant comment in the committee reports or legislative debates. See H. Rep. No. 1329, 76th Cong., 1st Sess.; 84 Cong. Rec. 10826–10827, 86 *id.* 474.

Viewed in the light of its genesis and legislative history, it seems clear that the requirement that notification of acceptance of "partial" jurisdiction be filed in each instance was designed to be applicable to any type of jurisdiction less than exclusive, including "concurrent" jurisdiction.[18]

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[18] Cf. H. Rep. No. 1623, 76th Cong., 3d sess., in which the Committee on the Judiciary, in favorably reporting the bill to extend Section 272 of the Criminal Code to places over which the United States had "concurrent" jurisdiction (Act

Only if this were so would the Act establish a simple and effective system by which all could know whether and to what extent the Federal Government was exercising jurisdiction over particular lands.

The Act has been interpreted to reach cases of concurrent jurisdiction by the agencies of the Government which have authority over the land in question in this case. In an opinion to the Assistant Chief of Staff, G–4, the Judge Advocate General of the Army advised:[16]

> It may be observed that section 355 of the Revised Statutes, as amended, *supra*, provides for the acceptance by the Secretary of War of two types of jurisdiction, namely, exclusive and partial. As indicated above, there is also a type of jurisdiction commonly referred to as "concurrent." It is believed that the term concurrent jurisdiction is embraced within the term partial jurisdiction, for the reason that in cases where a state has ceded concurrent jurisdiction the authority of the United States is not exclusive of state authority.

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of June 11, 1940, c. 323, 54 Stat. 304), apparently believed that "partial" and "concurrent" were synonymous; if it were otherwise Congress could be said to have deliberately left an hiatus in criminal jurisdiction over federal enclaves, i. e., areas over which "partial" but not "exclusive" or "concurrent" jurisdiction had been accepted.

[16] The full text of the opinion (J. A. G. 680.2, dated October 17, 1941, is set forth as Appendix D, *infra*, p. 46.

The same position was taken by the Solicitor of the Department of Agriculture in his opinion of July 18, 1942,[17] *supra:*

> * * * the acquisition of concurrent jurisdiction over lands acquired by the United States after February 1, 1940, is governed by Section 355 of the Revised Statutes, as amended * * *.

In *Bowen* v. *Johnston,* 306 U. S. 19, 29–30, this Court gave great weight to the administrative interpretation of a statute in similar circumstances, saying:

> The administration of the Park was placed with the War Department and it appears from its files that on July 14, 1930, upon a review of the pertinent legislation, the Judge Advocate General gave an opinion that the Act of 1927 "vests exclusive jurisdiction in the United States over that part of the Chickamauga and Chattanooga National Military Park located within the State of Georgia" and that violations of law occurring on the ceded lands are enforceable only by the proper authorities of the United States. As this administrative construction is a permissible one we find it persuasive and we think that the debated question of jurisdiction should be settled by construing the Act of 1927 in the same way.

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[17] The full text of the opinion (No. 4311) is set forth as Appendix C, *infra*, p. 34; see, also, Opinion No. 2979, Solicitor, Department of Agriculture, dated December 18, 1940, Appendix C, *infra*, p. 38.

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B. Congress has declined to accept concurrent jurisdiction over lands acquired for national forests

The same result, we think, is reached if the acquisition of the land in question is not governed by R. S. 355. As we have stated, the lands upon which the crimes were committed were acquired in 1940 by the United States through the Secretary of Agriculture for inclusion in the Kisatchie National Forest in Louisiana. The fact that they were being used for military purposes at the time the offenses were committed does not, we believe, affect the jurisdictional problem here presented, for this Court has held that "The character and purposes of its occupation having been officially and legally established by that branch of the government which has control over such matters, it is not open to the courts, on a question of jurisdiction, to inquire what may be the actual uses to which any portion of the reserve is temporarily put."[18] *Benson* v. *United States,* 146 U. S. 325, 331; see also, *Williams* v. *Arlington Hotel Co.,* 22 F. (2d) 669, 670–671 (C. C. A. 8); *State* v. *Bruce,* 104 Mont. 500 (1937).

By Act No. 90 in 1922, as amended by Act No. 71 in 1924 (Dart's Statutes of Louisiana, 3329), Appendix, *infra,* p. 31, Louisiana consented to

[18] The permission to use the lands given to the War Department by the Secretary of Agriculture was only temporary. See Exhibit G–1, filed in the court below, a copy of which has been filed with the Clerk of this Court.

the acquisition by the United States of lands within the borders of the state for national forests—

> * * * provided that the state shall retain a concurrent jurisdiction with the United States in and over such lands so that civil process in all cases and such criminal process as may issue under the authority of the state against the person charged with a commission of any crime without or within the said jurisdiction may be executed thereon in like manner as before the passage of this act.

It is thus clear that the State offered to cede to the United States concurrent jurisdiction over lands acquired for national forests. We think, however, that Section 12 of the Weeks Forestry Act of March 1, 1911, 36 Stat. 963, 16 U. S. C., Section 480, shows that Congress has declined to accept such a tender as to forest lands. That section provides that—

> The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned;[19] the intent and

[19] This reference to "offenses against the United States" meant those federal criminal laws applicable throughout the nation, or offenses relating to the protection of federal property. At that time, and indeed prior to the Act of June 11, 1940 (54 Stat. 304), amending Section 272 of the Criminal Code (18 U. S. C., Section 451, Third), no other fed-

> meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."[20]

The jurisdiction over persons within the forest would be both "affected" and "changed" within the meaning of this provision if they were subjected both to state laws and to the federal laws applicable to federal lands instead of to the former alone.[21]

The Department of Agriculture, which is charged with the supervision of the national forests, has administratively taken the view that under this statute the United States does not have concurrent jurisdiction over national forests. In Opinion No. 4311, dated July 18, 1942, the So-

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eral criminal laws applied to lands over which the United States did not have *exclusive* jurisdiction. See also n. 8, p. 9, *supra*.

[20] Substantially the same statutory provisions may be found in the Bankhead Act (Act of June 29, 1936, c. 868, sec. 1, 49 Stat. 2035, 40 U. S. C. 431) applying to resettlement projects, and the Act of June 29, 1936, c. 860, sec. 1, 49 Stat. 2026, 40 U. S. C. 421, applying to low-cost housing and slum-clearance projects.

[21] For example, persons could be prosecuted in both courts for the same offense, inasmuch as "the double-jeopardy provision of the Fifth Amendment does not stand as a bar to federal prosecution though a state conviction based on the same acts has already been obtained" (*Jerome* v. *United States*, No. 325, this Term, decided February 1, 1943).

licitor of the Department of Agriculture held that the Act of October 9, 1940 (c. 785, sec. 1, 54 Stat. 1058 (18 U. S. C. 576)), authorizing United States Commissioners to try petty offenses "committed in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction" is inapplicable to national forests. The opinion states:

> The exercise of exclusive jurisdiction by the United States over lands within national forests prior to February 1, 1940, was precluded by the provisions of Title 16, U. S. S. § 480 * * *.
>
> Since the section expressly provides that the State "shall not * * * lose its jurisdiction," it follows that the United States did not, prior to February 1, 1940, acquire exclusive jurisdiction.
>
> The remaining question for consideration is whether the United States, prior to February 1, 1940, acquired concurrent jurisdiction over national forest lands. In our opinion, section 480, *supra,* also requires a negative answer to this question. The acquisition of concurrent jurisdiction over national forest lands would mean that the United States, as well as the State, has general legislative authority with respect to persons and property located on such lands. In the exercise of such authority the Congress of the United States could pass laws

with respect to persons and property on such lands which might otherwise be beyond the scope of the legislative authority of Congress. For example, Congress, in exercising concurrent jurisdiction, might impose a personal property tax on the property of persons residing on national forest lands, with criminal penalties for attempts to evade the tax. But if such jurisdiction were to be exercised by the Congress, then "The jurisdiction, both civil and criminal, over persons" within the forests would be "affected" and "changed" contrary to the declaration of Congress in section 480, *supra*. Also, Congress might pass a law inconsistent with a State law. The Federal enactment in such a case would probably take precedence. If the State law was one conferring a right or a privilege on the inhabitants of the State, they would lose this right. This, in a very real sense, would involve a loss of jurisdiction by the State.

It is our opinion, therefore, that section 480, *supra*, precluded the exercise of concurrent jurisdiction as well as exclusive jurisdiction by the United States over national forest lands, prior to February 1, 1940. * * *

This administrative construction of the statute would seem to be correct. Cf. *Bowen* v. *Johnston*, *supra*, p. 21. Thus we think that, apart from R. S. 355, the United States has not accepted concurrent jurisdiction over national forest lands despite the

express grant of such jurisdiction in the 1922 Louisiana Act.[11]

CONCLUSION

We respectfully submit that the first question certified should be answered in the affirmative and the second in the negative.

CHARLES FAHY,
Solicitor General.
WENDELL BERGE,
Assistant Attorney General.
OSCAR A. PROVOST,
Special Assistant to the Attorney General.
W. MARVIN SMITH,
ROBERT L. STERN,
Attorneys.

MAY 1943.

[11] It is unnecessary to determine whether the 1940 amendment to R. S. 355 supersedes the Weeks Forestry Act so as to authorize the Secretary of Agriculture now to accept jurisdiction over national forest lands, inasmuch as no such acceptance was filed in this case. That question was expressly reserved in the Opinion of the Solicitor of the Department, p. 36, *infra*.

APPENDIX A

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Article I, Section 8, Clause 17, of the Constitution provides, in part:

> The Congress shall have Power * * *
> To exercise exclusive Legislation * * *
> over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock Yards, and other needful Buildings.

2. Section 272 of the Criminal Code, as amended (18 U. S. C. 451), defining the places over which the provisions of the Criminal Code shall be applicable, provides, in part:

> The crimes and offenses defined in sections 451–468 of this title shall be punished as herein prescribed:
>
> * * * * * * *
>
> Third. When committed within or on any lands reserved or acquired for the use of the United States, and under the exclusive or concurrent jurisdiction thereof, or any place purchased or otherwise acquired by the United States by consent of the legislature of the State in which the same shall be, for the erection of a fort, magazine, arsenal, dockyard, or other needful building.
>
> * * * * * * *
>
> * * * (Mar. 4, 1909, ch. 321, § 272, 35 Stat. 1142; June 11, 1940, ch. 323, 54 Stat. 304.)

3. Section 278 of the Criminal Code (18 U. S. C. 457) provides that:

> Whoever shall commit the crime of rape shall suffer death.

4. Section 355 of the Revised Statutes, as amended (c. 793, 54 Stat. 1083, 40 U. S. C. 255), provides, in part:

* * * * * * *

> Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted.

5. Section 12 of the Weeks Forestry Act (16 U. S. C. 480) providing for jurisdiction over national forests, reads:

> The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State. (June 4, 1897, ch. 2, § 1, 30 Stat. 36; Mar. 1, 1911, ch. 186, § 12, 36 Stat. 963.)

6. Section 2 of Louisiana Act No. 12 (1892) (Dart's Statutes of Louisiana, § 2898), consenting to the purchase of lands by the United States for any purpose, reads as follows:

> The United States may enter upon and occupy any land which may have been, or may be purchased or condemned, or otherwise acquired, and shall have the right of exclusive jurisdiction over the property so acquired during the time that the United States shall be or remain the owner thereof for all purposes, except the administration of the criminal laws of said state, and the service of civil process of said state therein, and shall hold the same exempt from all state, parochial, municipal, or other taxation.

7. Louisiana Act No. 90 (1922), as amended by Act No. 71 (1924) (Dart's Statutes of Louisiana

§ 3329), consenting to the purchase of lands by the United States for national forests, reads as follows:

> 3329. *Establishment of national forests.*—The consent of the state of Louisiana is hereby given to the acquisition by the United States by purchase or gift of such land in Louisiana, as in the opinion of the federal government may be needed for the establishment of a national forest or forests in this region; provided that the state shall retain a concurrent jurisdiction with the United States in and over such lands so that civil process in all cases and such criminal process as may issue under the authority of the state against the person charged with a commission of any crime without or within the said jurisdiction may be executed thereon in like manner as before the passage of this act. Power is hereby conferred on congress to pass such laws as it may deem necessary to the acquisition as herein provided for incorporation in said national forest of such forests covered or cut-over lands lying in Louisiana as in the opinion of the federal government may be needed. The power is hereby conferred upon congress to pass such laws and to make or provide for the making of such rules and regulations of both civil and criminal nature and provide punishment for violation thereof, as in its judgment may be necessary for the management, control and protection of such lands as may from time to time be acquired by the United States under the provisions of this section.

APPENDIX B

The letter of the Secretary of War, dated January 2, 1943, to the Governor of Louisiana, accepting exclusive jurisdiction over the lands involved, reads as follows:

Honorable SAM H. JONES,
Governor of Louisiana,
Baton Rouge, Louisiana.

DEAR GOVERNOR JONES: This is to advise you that the United States has acquired title in fee simple to certain lands located in the State of Louisiana, more fully described in the list of military reservations inclosed, designated as Exhibit "A". Further information, if desired, as to the description of said lands may be obtained from the Office of the U. S. Division Engineer of the Southwestern Division, Santa Fe Building, 1114 Commerce Street, Dallas, Texas.

Pursuant to section 355, Revised Statutes, as amended by the acts of February 1, 1940 (54 Stat. 19), and October 9, 1940 (54 Stat. 1083; 40 U. S. C. 255), notice is hereby given that the United States accepts exclusive jurisdiction over these lands, effective as of the 15th day of January 1943, at 12:00 noon. The transfer of such jurisdiction has been authorized by virtue of the provisions of sections 1 and 2 of Act No. 12 of the Acts of 1892, as amended and reenacted by Act No. 31, approved July 5, 1942 (Acts of Louisiana, 1942, p. 119).

Return of the duplicate copy of this letter, with your indorsement thereon designating time of receipt of this acceptance by your office, would be appreciated.

Sincerely yours,

HENRY L. STIMSON,
Secretary of War.

The original of this letter of acceptance together with Exhibit "A" was received in the Office of the Governor on the 7th day of January, 1943.

SAM H. JONES,
Governor of the State of Louisiana.

APPENDIX C

Opinion No. 4311 of the Solicitor, Department of Agriculture, reads as follows:

JULY 18, 1942.

Mr. PHILIP M. DIMON,
Regional Attorney, Office of the Solicitor, U. S. D. A., 632 Bankers Securities Building, Juniper and Walnut Streets, Philadelphia, Pennsylvania.

DEAR MR. DIMON: Mr. A. R. DeFelice, former Regional Law Officer, has asked us to furnish our views concerning the question whether United States commissioners are authorized to try persons charged with violations, on national forest lands, of the Act of November 15, 1941 (Pub. L. No. 293, 77th Cong., 1st Sess.), which amends Sections 52 and 53 of the Criminal Code (18 U. S. C. 106, 107).

The Act of October 9, 1940, entitled "An Act To confer jurisdiction upon certain United States commissioners to try petty offenses committed on Federal reservations" (18 U. S. C. 576–576d; 54 Stat. 1058), provides, in part:

"That any United States commissioner specially designated for that purpose by the court by which he was appointed shall have jurisdiction to try and, if found guilty, to sentence persons charged with petty offenses against the law, or rules and regulations made in pursuance of law, committed in any place over which the Congress has exclusive power to legislate or over which the United States has concurrent jurisdiction, and within the judicial

district for which such commissioner was appointed. The probation laws shall be applicable to persons so tried before United States commissioners. For the purposes of this Act the term 'petty offense' shall be defined as in section 335 of the Criminal Code (U. S. C., title 18, sec. 541). * * *"

We concur in Mr. DeFelice's conclusion that the jurisdiction of United States commissioners under this act does not extend to violations of Section 52 of the Criminal Code, as amended (18 U. S. C. 106 (Supp. I (1941))), since the punishment for violations of this section is greater than that prescribed for a "petty offense," being a fine of not more than $5,000, or imprisonment of not more than five years, or both.

Section 53 of the Criminal Code, as amended (18 U. S. C. 107 (Supp. I (1941)), prohibits the builder of a fire from leaving the fire without totally extinguishing it, and pertains to lands owned, controlled, or leased by, or under the partial, concurrent, or exclusive jurisdiction of, the United States. The penalty for a violation of this section is such as to constitute it a petty offense, and, consequently, a person charged with such a violation can be tried before a United States commissioner, provided the violation occurs upon lands over which the United States has concurrent or exclusive jurisdiction. Therefore, if the Forest Service desires to prosecute violations of this section occurring on national forest lands before United States commissioners, it is necessary to determine whether the United States has either exclusive or concurrent jurisdiction over such lands.

As Mr. DeFelice pointed out in his letter, the acquisition of concurrent jurisdiction over lands acquired by the United States after February 1, 1940, is governed by Section 355 of the Revised Statutes, as amended, on that date by Pub. L. No. 825, 76th Cong., 3d Sess. (40 U. S. C. 255). This section, of course, also governs the acquisition of exclusive jurisdiction over such lands. In addition, the section governs the acquisition of exclusive and concurrent jurisdiction over lands acquired before that date if, on that date, jurisdiction was not in the United States. Op. Sol. 3268. The question whether the United States may acquire either exclusive or concurrent jurisdiction over national forest lands pursuant to R. S. 355, in view of 16 U. S. C. 480, *infra,* need not be decided at this time, since this has not been proposed. Also, since no action has been taken pursuant to the amendment of February 1, 1940, to section 355, it is clear that neither exclusive nor concurrent jurisdiction over any national forest lands has been acquired since that date. The question, therefore, is whether the United States had either exclusive or concurrent jurisdiction over national forest lands on or prior to February 1, 1940. On this question, the aforementioned amendment to section 355 has no bearing. Op. Sol. 3268.

The exercise of exclusive jurisdiction by the United States over lands within national forests prior to February 1, 1940, was precluded by the provisions of Title 16, U. S. C. § 480. That section provides:

"The jurisdiction, both civil and criminal, over persons within national forests shall not be affected or changed by reason of their existence, except so far as the punishment of offenses against the United States therein

is concerned; the intent and meaning of this provision being that the State wherein any such national forest is situated shall not, by reason of the establishment thereof, lose its jurisdiction, nor the inhabitants thereof their rights and privileges as citizens, or be absolved from their duties as citizens of the State."

Since the section expressly provides that the State "shall not * * * lose its jurisdiction," it follows that the United States did not, prior to February 1, 1940, acquire exclusive jurisdiction.

The remaining question for consideration is whether the United States, prior to February 1, 1940, acquired concurrent jurisdiction over national forest lands. In our opinion, section 480, *supra,* also requires a negative answer to this question. The acquisition of concurrent jurisdiction over national forest lands would mean that the United States, as well as the State, has general legislative authority with respect to persons and property located on such lands. In the exercise of such authority the Congress of the United States could pass laws with respect to persons and property on such lands which might otherwise be beyond the scope of the legislative authority of Congress. For example, Congress, in exercising concurrent jurisdiction, might impose a personal property tax on the property of persons residing on national forest lands, with criminal penalties for attempts to evade the tax. But if such jurisdiction were to be exercised by the Congress, then "The jurisdiction, both civil and criminal, over persons" within the forests would be "affected" and "changed" contrary to the declaration of Congress in section 480, *supra.* Also, Congress might pass a law in-

consistent with a State law. The Federal enactment in such a case would probably take precedence. If the State law was one conferring a right or a privilege on the inhabitants of the State, they would lose this right. This, in a very real sense, would involve a loss of jurisdiction by the State.

It is our opinion, therefore, that section 480, *supra*, precluded the exercise of concurrent jurisdiction as well as exclusive jurisdiction by the United States over national forest lands, prior to February 1, 1940. As already pointed out, no jurisdiction has been acquired since that time pursuant to the amendment to R. S. 355, passed on February 1, 1940 (assuming without deciding that this would be possible). Therefore, since United States commissioners have jurisdiction to try persons charged with the violation of Section 53 of the Criminal Code, as amended (18 U. S. C. 107 (Supp. I (1941))), only when the alleged violation occurred on lands over which the United States has exclusive or concurrent jurisdiction, it is our opinion that such commissioners do not have jurisdiction to try persons charged with any such violations committed on national forest lands.

Sincerely yours,

(Signed) ROBERT H. SEIELDS,
Solicitor.

Opinion No. 2979 of the Solicitor, Department of Agriculture, reads as follows:

DECEMBER 18, 1940.

Mr. EDWARD F. MYNATT,
Regional Law Officer,
Office of the Solicitor, U. S. D. A.,
Glenn Building, Atlanta, Ga.

DEAR MR. MYNATT: Reference is made to your letter of November 18, 1940, concern-

ing an interpretation of the last paragraph of section 355 of the Revised Statutes (U. S. C., Title 40, § 255), as amended by the act of October 9, 1940 (Public, No. 825, 76th Cong., 3d Sess.), which reads as follows:

"Notwithstanding any other provision of law, the obtaining of exclusive jurisdiction in the United States over lands or interests therein which have been or shall hereafter be acquired by it shall not be required; but the head or other authorized officer of any department or independent establishment or agency of the Government may, in such cases and at such times as he may deem desirable, accept or secure from the State in which any lands or interests therein under his immediate jurisdiction, custody, or control are situated, consent to or cession of such jurisdiction, exclusive or partial, not theretofore obtained, over any such lands or interests as he may deem desirable and indicate acceptance of such jurisdiction on behalf of the United States by filing a notice of such acceptance with the Governor of such State or in such other manner as may be prescribed by the laws of the State where such lands are situated. Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted."

This provision was first made a part of section 355 by an amendment approved February 1, 1940 (Public No. 409—76th Cong., 3d Sess.), so that its provisions referring to lands "heretofore" or "hereafter" acquired must be applied as of February 1, 1940, rather than October 9, 1940.

You state that the Regional Forester has asked to be advised of the procedure which must be followed in order to comply with

this provision of the statute. You say that you do not believe it is necessary to take any steps under the procedure provided in the amendment to obtain jurisdiction over lands acquired by the United States pursuant to the Weeks Act (U. S. C., Title 16, §§ 480, 500, 513–15, 517–19, 521, 552) before the effective date of the amendment, but that you would like to have the opinion of this office as to the necessity of following the procedure with regard to lands acquired after the effective date of the amendment.

In substance, the amendment provides that:

(1) The United States is *not required* to obtain exclusive jurisdiction over *any* lands acquired by it before or after February 1, 1940;

(2) Jurisdiction, exclusive or partial, *may* be obtained by the head of a department over lands under his jurisdiction (acquired before or after February 1, 1940) "in such cases and at such times as he may deem desirable" by following the procedure established by the amendment;

(3) If jurisdiction, exclusive or partial, is not accepted or secured in the manner provided by the amendment, it is *conclusively presumed*, as to lands acquired after February 1, 1940, that *no jurisdiction* (exclusive or partial) has been accepted by the United States.

As to lands acquired before February 1, 1940.—This office concurs in your opinion that it is not necessary to take steps to obtain jurisdiction from the State over lands acquired under the Weeks Act before February 1, 1940. The amendment does not alter the jurisdiction of the Federal Government, or of the States, over lands acquired before February 1, 1940, but such

jurisdiction, if any, as was obtained by the Government when the lands were acquired, by virtue of the laws of the United States and the State consent and cession statutes that were then in effect, remains undisturbed. As to such lands, it merely provides a simplified procedure for the acquisition of jurisdiction "not theretofore obtained." While cases may arise in which the United States may wish to acquire additional jurisdiction over lands purchased and to avail itself of this procedure in order before the effective date of the amendment to do so, it is believed that such cases will be rare and cannot at this time be anticipated. Therefore, as a general rule, no procedure should be established for obtaining additional jurisdiction over these lands as a routine matter.

As to lands acquired after February 1, 1940.—It is the opinion of this office that it will not normally be necessary to take steps to obtain jurisdiction from the State over lands acquired under the Weeks Act after February 1, 1940.

Prior to the amendment of section 355, the United States could acquire exclusive jurisdiction over lands in one of three ways: (1) by reservation of such jurisdiction over designated areas at the time of admission of a State into the Union; (2) by purchase, with the consent of the State, "for the erection of forts, magazines, arsenals, dockyards and other needful buildings" (U. S. Const., Art. I, § 8, cl. 17); or (3) by an act of the State legislature expressly ceding such jurisdiction. The same was true of partial jurisdiction (*James* v. *Dravo Contracting Co.*, 302 U. S. 134 (1937)). This is still true under the amendment, but whereas jurisdiction consented to, or ceded,

by a State act was normally presumed to have been accepted, the amendment now provides that it shall be *conclusively presumed* that no jurisdiction has been accepted, unless it is affirmatively accepted in the manner provided in the amendment. That being the case, State laws, such as § 2050 of the South Carolina Code (1932), consenting to the acquisition of lands for national forest purposes, as required by section 7 of the Weeks Act (U. S. C., Title 16, § 517), and § 2099 of the North Carolina Code (1939), conferring exclusive jurisdiction upon the United States over the game and fish in national forests, will not result in the acquisition of jurisdiction by the Federal Government, unless action is taken to accept such jurisdiction, pursuant to the procedure provided in the amendment.

The fact that the United States will not obtain any jurisdiction, in the ordinary course of events, over lands acquired after the effective date of the amendment will not normally cause any embarrassment in the administration of the Federal programs for which the lands were acquired.

Article IV, Section 3, Clause 2, of the United States Constitution provides in part as follows:

"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; * * *."

In *Surplus Trading Co.* v. *Cook,* 281 U. S. 647 (1930), the Court said (p. 650):

"It is not unusual for the United States to own within a State lands which are set apart and used for public purposes. Such ownership and use without more do not

withdraw the lands from the jurisdiction of the State. On the contrary, the lands remain part of her territory and within the operation of her laws, *save that the latter cannot affect the title of the United States or embarrass it in using the lands or interfere with its right of disposal.*" [Italics supplied.]

In *Utah Power & Light Co.* v. *United States,* 243 U. S. 389, 404 (1917), the Court said:

"True, for many purposes a State has civil and criminal jurisdiction over lands within its limits belonging to the United States, *but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them.*" [Italics supplied.]

This power of the Government over its lands results from the ownership of the lands by the Federal Government, and does not depend upon the acquisition of jurisdiction. It is an inherent power stemming from the above-quoted clause of the Constitution, and is independent of jurisdiction, exclusive or partial, that may be acquired by the Federal Government. This point is well illustrated by *Hunt* v. *United States,* 278 U. S. 96 (1928), in which it was held that the Secretary of Agriculture, pursuant to Congressional authority, could order a reduction in the number of deer in a game preserve, despite the fact that it was contrary to the game laws of Arizona, the State in which the lands were located. The Court said (p. 100):

"* * * the power of the United States to thus protect its lands and property does

not admit of doubt [citing cases], the game laws or any other statutes of the State to the contrary notwithstanding."

It should be noted that when the *Hunt* case was decided, Arizona apparently did not have a law conferring exclusive jurisdiction on the United States over the game and fish on national forest lands, such as § 2099 of North Carolina Code (1939), which was mentioned in *Chalk* v. *United States,* 111 F. (2d) 207 (C. C. A. 4th, 1940), to which you referred. It is, therefore, clear that the United States does not need to obtain jurisdiction in order to regulate game on national forests. In the *Chalk* case itself the court said (p. 211) that the exclusive jurisdiction ceded by the statute was "in addition to the inherent power of the Government to protect its property."

Numerous other cases could be cited to the effect that the power of Congress over lands of the United States is *superior* to the power of the State, and where an exercise of this power by the Federal Government, pursuant to an authorized use of the lands, conflicts with that of the State, the latter is superseded. (See Op. Sol. No. 2318, to Dr. Bennett, April 1, 1940; Op. Sol. No. 1417, to Dr. Gabrielson, May 17, 1939; and cases cited in these opinions.)

One of the purposes of the amendment apparently was to prevent in the future some of the confusion that has occurred in the past concerning the extent of State jurisdiction over Federally-owned lands and to make the acquisition of jurisdiction by the Federal Government the exception rather than the general rule. (See the excerpt from the letter of the Attorney General to the Chairman of the House Committee on Public Buildings and Grounds, dated July

28, 1939, commenting on H. R. 7293, which was later enacted as Public, No. 409, 76th Cong., 3d Sess. (86 Cong. Rec., January 18, 1940, at 765).

Hence, it is seldom, if ever, necessary for the Federal Government to acquire any jurisdiction, exclusive or partial, from the States in order to carry out the purposes for which lands are acquired. Thus, exclusive or partial jurisdiction will only be desired in exceptional cases, where, for special reasons, the Government may wish to have the States *exclude* themselves from jurisdiction, even though an exercise of the jurisdiction would not interfere with the activities of the Federal Government.

Consequently, on the basis of the facts available to us, we know of no reason why general notices accepting jurisdiction, exclusive or partial, need be sent to the Governors of the States.

A copy of this opinion is being sent to the Chief of the Forest Service, so that he may consider whether there are certain cases in which the Forest Service feels that it is desirable to obtain jurisdiction from the State over lands administered by it. Will you please also let us have any ideas which you may have on the subject.

Very truly yours,

[Signed] MASTIN G. WHITE,
Solicitor.

APPENDIX D

The full text of the Opinion of the Judge Advocate General of the Army (J. A. G. 680.2) reads as follows:

OCTOBER 17, 1941.

Military Reservations
JAG 680.2

MEMORANDUM for the Assistant Chief of Staff, G–4.

Subject: Acquisition of jurisdiction over lands acquired by the War Department.

1. By memorandum (G–4/29326–33 AG 601.1 (9–24–41)) dated September 30, 1941, there has been referred to this office, for comment and recommendation, a file of correspondence relative to the above subject. Included in the file is a memorandum from The Quartermaster General, dated September 24, 1941, requesting that an expression of policy be made in connection with the matter of acquiring jurisdiction, and a memorandum from the Under Secretary of War, dated September 25, 1941, requesting that action be taken to acquire exclusive jurisdiction over all military reservations and industrial facilities heretofore or hereafter acquired by purchase or lease by the United States. There is also included in the file a copy of a circular letter from The Adjutant General to the commanding generals of all corps areas, the Chief of the Air Corps, and the chiefs of all services, dated April 17, 1941, requesting their comments and recommendations as to whether exclusive or concurrent jurisdiction is desired over certain classes

of property set forth therein, and a chart containing a summary of the comments and recommendations received as a result of the circular letter.

2. The correspondence raises the question of the desirability of acquiring jurisdiction over three types of property, namely:

a. Land purchased by the United States.

b. Land leased to the United States.

c. Land in which the United States has been granted easements.

The question is also raised with respect to the extent of the jurisdiction which should be acquired.

3. Jurisdiction may be acquired by the United States either (a) by purchase of land with the consent of the legislature of the state wherein the land lies, under the provisions of Article I, section 8, clause 17 of the Federal Constitution, or (b) by direct cession of such jurisdiction to the United States. In either event express acceptance of jurisdiction by the United States is required by the provisions of section 355 of the Revised Statutes as amended by the act of February 1, 1940 (54 Stat. 19), and the act of October 9, 1940 (54 Stat. 1083; 40 U. S. C. 255). Furthermore, it is well settled that jurisdiction acquired from a state by the United States, whether by consent to the purchase or by cession, may be qualified in accordance with agreements reached by the respective governments (*James Stewart & Co.* v. *Sadrakula,* 309 U. S. 94, 99).

With reference to the lands over which the United States may acquire jurisdiction, the acts of February 1, 1940, and October 9, 1940, *supra,* provide that consent to or cession of jurisdiction may be accepted or

secured over such *lands or interests therein* as may be desirable. Hence, it seems clear that in addition to the acquisition of jurisdiction over land which it owns in fee, the United States may also acquire jurisdiction over land which it occupies under lease, and over land in which it has been granted easements.

4. In further considering the matter in question it may be observed that there are three types of jurisdiction which may be acquired by the United States: exclusive, partial, and concurrent. Where the United States acquires exclusive jurisdiction complete sovereignty is vested in the Federal Government, and control by the state is terminated. In such cases, however, there continue, in effect, until abrogated, those rules existing at the time the state surrenders jurisdiction which govern the rights of the occupants of the territory transferred (*Stewart* v. *Sadrakula, supra*). Future statutes of the state, however, are not a part of the body of laws in the ceded area (*ibid.*). Partial jurisdiction vests in the United States in those instances where there is consent to or cession of exclusive jurisdiction with a reservation of some rights by the state, as, for example, where the state reserves certain rights with regard to taxation in the ceded area. It also vests in those cases where there is a consent to or cession of jurisdiction for a particular purpose, as, for example, jurisdiction in criminal matters. Concurrent jurisdiction results from a consent to or cession of jurisdiction with a retention of concurrent jurisdiction by the state. Concurrent jurisdiction may be defined as the juris-

diction of two powers over one and the same place (*Nielsen* v. *State of Oregon*, 212 U. S. 315, 319). In such cases, therefore, the State and Federal Governments occupy an equal status with regard to jurisdiction, and the one first acquiring jurisdiction may prosecute and punish for an act punishable by the laws of both (ibid., p. 320).

In connection with this discussion it is deemed pertinent to invite attention to the act of June 11, 1940 (54 Stat. 304; 18 U. S. C. 451), which amended section 272 of the Federal Criminal Code so as to make it applicable to all lands acquired for the use of the United States and under its exclusive or *concurrent* jurisdiction. Section 272 of the Federal Criminal Code designates the areas in which the criminal laws of the United States shall be effective. It follows, therefore, that the criminal laws of the United States are in effect in areas where the United States has concurrent or exclusive jurisdiction. Furthermore, with respect to such areas, where there is no Federal criminal law applicable to a particular matter, the law of the state applicable thereto and in force on February 1, 1940, is effective, and a violator thereof will be deemed guilty of a like offense and subject to a like punishment (act of June 6, 1940, 54 Stat. 234; 18 U. S. C. 468).

In view of the foregoing discussion, it appears that with respect to areas over which the United States has exclusive jurisdiction the only civil laws of the state in effect are those governing the rights of the occupants of the territory and in force at the time jurisdiction was acquired. Such laws, of course, may be abrogated by Con-

gress. No criminal laws of the state are effective unless covered by the act of June 6, 1940, *supra*. The same principles may be applicable with respect to areas over which the United States has partial jurisdiction, the definite determination in such cases depending, however, on the nature of the rights reserved by the state. In connection with areas over which concurrent jurisdiction has been acquired, the laws of both the state and Federal Governments are in effect.

It may be observed that section 355 of the Revised Statutes, as amended, *supra*, provides for the acceptance by the Secretary of War of two types of jurisdiction, namely, exclusive and partial. As indicated above, there is also a type of jurisdiction commonly referred to as "concurrent." It is believed that the term concurrent jurisdiction is embraced within the term partial jurisdiction, for the reason that in cases where a state has ceded concurrent jurisdiction the authority of the United States is not exclusive of state authority.

5. The question of the extent of jurisdiction which should be acquired over lands of the United States is a matter for administrative determination. It would seem that in reaching such a determination consideration should be given to the purposes for which the land is acquired and the extent of administration and control which is desired thereover. In this connection, it is believed that the recommendations contained in the chart referred to in paragraph 1 hereof should be given careful consideration. It must be borne in mind, however, that the laws of the various states differ with respect to the procedure necessary for

the acquisition of jurisdiction. In many instances a special act of the State legislature may be required. This is particularly true with respect to leased land and land in which the United States has easements, inasmuch as general acts of cession usually relate only to land acquired in fee. Furthermore, it may be observed that the states may be unwilling to cede more than concurrent jurisdiction over areas occupied by industrial plants operated by nongovernmental agencies. In fact, this policy may prevail in some states with regard to any land not owed in fee by the United States.

6. In summarizing, it is the opinion of this office:

a. That jurisdiction may be acquired by the United States over lands which it occupies under lease or in which it owns easements, as well as over land which it owns in fee

b. That the jurisdiction acquired by the United States may be either exclusive, partial, or concurrent.

c. That the question of the extent of jurisdiction which should be acquired is a matter for administrative determination, concerning which no recommendation is made. In this connection, however, it is desired to point out that for the better protection of the interests of the United States and to insure full and complete administrative control of the premises, unhampered by state laws and regulations, the obtaining of exclusive jurisdiction in most cases would seem to be advisable, particularly over those areas owned in fee by the United States. With respect to land in which the United States has only a leasehold interest or easement, it is

doubtful whether all the states would be willing to cede exclusive jurisdiction to the United States, since such action would, among other things, remove such areas from their taxing powers.

For The Judge Advocate General:

[s] OSCAR R. RAND,
Oscar R. Rand,
Lieutenant Colonel, J. A. G. D.,
Chief of Section.

U. S. GOVERNMENT PRINTING OFFICE: 1943

SUPREME COURT OF THE UNITED STATES.

No. 889.—October Term, 1942.

Richard Philip Adams, John Walter Brodenave and Lawrence Mitchell, *vs.* The United States of America and John S. Ryan, Warden.	On Certificate from the United States Circuit Court of Appeals for the Fifth Circuit.

[May 24, 1943.]

Mr. Justice Black delivered the opinion of the Court.

The Circuit Court of Appeals for the Fifth Circuit has certified to us two questions of law pursuant to § 239 of the Judicial Code. The certificate shows that the three defendants were soldiers and were convicted under 18 U. S. C. §§ 451, 457, in the federal District Court for the Western District of Louisiana, for the rape of a civilian woman. The alleged offense occurred within the confines of Camp Claiborne, Louisiana, a government military camp, on land to which the government had acquired title at the time of the crime. The ultimate question is whether the camp was, at the time of the crime, within the federal criminal jurisdiction.

The Act of October 9, 1940, 40 U. S. C. § 255, passed prior to the acquisition of the land on which Camp Claiborne is located, provides that United States agencies and authorities may accept exclusive or partial jurisdiction over lands acquired by the United States by filing a notice with the Governor of the state on which the land is located or by taking other similar appropriate action. The Act provides further: "Unless and until the United States has accepted jurisdiction over lands hereafter to be acquired as aforesaid, it shall be conclusively presumed that no such jurisdiction has been accepted." The government had not given notice of acceptance of jurisdiction at the time of the alleged offense.[1]

The questions certified are as follows:

"1. Is the effect of the Act of Oct. 9, 1940, above quoted, to provide that, as to lands within a State thereafter acquired by

[1] Exclusive jurisdiction over the lands on which the Camp is located was accepted for the federal government by the Secretary of War in a letter to the Governor of Louisiana, effective January 15, 1943.

the United States, no jurisdiction exists in the United States enforce the criminal laws embraced in United States Code Tit 18, Chapter 11, and especially Section 457 relating to rape, virtue of Section 451, Third, as amended June 11, 1940, unle and until a consent to accept jurisdiction over such lands is fil in behalf of the United States as provided in said Act?

"2. Had the District Court of the Western District of Louisia jurisdiction, on the facts above set out, to try and sentence t appellants for the offense of rape committed within the bounds Camp Claiborne on May 10, 1942?"

Since the government had not given the notice required by t 1940 Act, it clearly did not have either "exclusive or partial" ju isdiction over the camp area. The only possible reason suggest as to why the 1940 Act is inapplicable is that it does not requi the government to give notice of acceptance of "concurrent juri diction." This suggestion rests on the assumption that the ter "partial jurisdiction" as used in the Act does not include "co current jurisdiction."

The legislation followed our decisions in *James* v. *Dravo Co tracting Co.*, 302 U. S. 134; *Mason Co.* v. *Tax Commission*, 3 U. S. 186; and *Collins* v. *Yosemite Park Co.*, 304 U. S. 518. The cases arose from controversies concerning the relation of feder and state powers over government property and had pointed t way to practical adjustments. The bill resulted from a cooper tive study by government officials, and was aimed at giving bro discretion to the various agencies in order that they might obta only the necessary jurisdiction.[2] The Act created a definite meth of acceptance of jurisdiction so that all persons could know whethe the government had obtained "no jurisdiction at all, or parti jurisdiction, or exclusive jurisdiction."[3]

Both the Judge Advocate General of the Army[4] and the Soli tor of the Department of Agriculture[5] have construed the 19 Act as requiring that notice of acceptance be filed if the gover ment is to obtain concurrent jurisdiction. The Department

[2] In the words of a sponsor of the bill, the object of the act was flexibili so "that the head of the acquiring agency or department of the Governme could at any time designate what type of jurisdiction is necessary; that either exclusive or partial. In other words it definitely contemplates leavi the question of extent of jurisdiction necessary to the head of the la acquiring agency." Hearings, House Committee on Buildings and Grou H. R. 7293, 76th Cong., 1st Sess., p. 5.

[3] *Ibid.*, 7.

[4] Ops. J. A. G. 680.2.

[5] Opinion No. 4311, Solicitor, Department of Agriculture.

Justice has abandoned the view of jurisdiction which prompted the institution of this proceeding, and now advises us of its view that concurrent jurisdiction can be acquired only by the formal acceptance prescribed in the act. These agencies co-operated in developing the act, and their views are entitled to great weight in its interpretation. Cf. *Bowen* v. *Johnson*, 306 U. S. 19, 29-30. Besides, we can think of no other rational meaning for the phrase "jurisdiction, exclusive or partial" than that which the administrative construction gives it.

Since the government had not accepted jurisdiction in the manner required by the Act, the federal court had no jurisdiction of this proceeding. In this view it is immaterial that Louisiana statutes authorized the government to take jurisdiction, since at the critical time the jurisdiction had not been taken.[6]

Our answer to certified question No. 1 is Yes and to question No. 2 is No.

It is so ordered.

[6] Dart's Louisiana Stat. (Supp.) 2898. In view of the general applicability of the 1940 Act it is unnecessary to consider the effect of the Weeks Forestry Act, 16 U. S. C. 480 and the Louisiana statute dealing with jurisdiction in national forests, Dart's Louisiana Stat. 3329, even though the land involved here was originally acquired for forestry purposes.